

1 AN ACT in relation to criminal law.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 5. The Criminal Code of 1961 is amended by  
5 changing Section 9-1 as follows:

6 (720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

7 Sec. 9-1. First degree Murder - Death penalties -  
8 Exceptions - Separate Hearings - Proof - Findings - Appellate  
9 procedures - Reversals.

10 (a) A person who kills an individual without lawful  
11 justification commits first degree murder if, in performing  
12 the acts which cause the death:

13 (1) he either intends to kill or do great bodily  
14 harm to that individual or another, or knows that such  
15 acts will cause death to that individual or another; or

16 (2) he knows that such acts create a strong  
17 probability of death or great bodily harm to that  
18 individual or another; or

19 (3) he is attempting or committing a forcible  
20 felony other than second degree murder.

21 (b) Aggravating Factors. A defendant who at the time of  
22 the commission of the offense has attained the age of 18 or  
23 more and who has been found guilty of first degree murder may  
24 be sentenced to death if:

25 (1) the murdered individual was a peace officer or  
26 fireman killed in the course of performing his official  
27 duties, to prevent the performance of his official  
28 duties, or in retaliation for performing his official  
29 duties, and the defendant knew or should have known that  
30 the murdered individual was a peace officer or fireman;  
31 or

1           (2) the murdered individual was an employee of an  
2 institution or facility of the Department of Corrections,  
3 or any similar local correctional agency, killed in the  
4 course of performing his official duties, to prevent the  
5 performance of his official duties, or in retaliation for  
6 performing his official duties, or the murdered  
7 individual was an inmate at such institution or facility  
8 and was killed on the grounds thereof, or the murdered  
9 individual was otherwise present in such institution or  
10 facility with the knowledge and approval of the chief  
11 administrative officer thereof; or

12           (3) the defendant has been convicted of murdering  
13 two or more individuals under subsection (a) of this  
14 Section or under any law of the United States or of any  
15 state which is substantially similar to subsection (a) of  
16 this Section regardless of whether the deaths occurred  
17 as the result of the same act or of several related or  
18 unrelated acts so long as the deaths were the result of  
19 either an intent to kill more than one person or of  
20 separate acts which the defendant knew would cause death  
21 or create a strong probability of death or great bodily  
22 harm to the murdered individual or another; or

23           (4) the murdered individual was killed as a result  
24 of the hijacking of an airplane, train, ship, bus or  
25 other public conveyance; or

26           (5) the defendant committed the murder pursuant to  
27 a contract, agreement or understanding by which he was to  
28 receive money or anything of value in return for  
29 committing the murder or procured another to commit the  
30 murder for money or anything of value; or

31           (6) the murdered individual was killed in the  
32 course of another felony if:

33                   (a) the murdered individual:

34                           (i) was actually killed by the defendant,

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or  
  
(ii) received physical injuries personally inflicted by the defendant substantially contemporaneously with physical injuries caused by one or more persons for whose conduct the defendant is legally accountable under Section 5-2 of this Code, and the physical injuries inflicted by either the defendant or the other person or persons for whose conduct he is legally accountable caused the death of the murdered individual; and

(b) in performing the acts which caused the death of the murdered individual or which resulted in physical injuries personally inflicted by the defendant on the murdered individual under the circumstances of subdivision (ii) of subparagraph (a) of paragraph (6) of subsection (b) of this Section, the defendant acted with the intent to kill the murdered individual or with the knowledge that his acts created a strong probability of death or great bodily harm to the murdered individual or another; and

(c) the other felony was one of the following: armed robbery, armed violence, robbery, predatory criminal sexual assault of a child, aggravated criminal sexual assault, aggravated kidnapping, aggravated vehicular hijacking, forcible detention, arson, aggravated arson, aggravated stalking, burglary, residential burglary, home invasion, calculated criminal drug conspiracy as defined in Section 405 of the Illinois Controlled Substances Act, streetgang criminal drug conspiracy as defined in Section 405.2 of the Illinois Controlled Substances Act, or the attempt to commit any of the

1 felonies listed in this subsection (c); or

2 (7) the murdered individual was under 12 years of  
3 age and the death resulted from exceptionally brutal or  
4 heinous behavior indicative of wanton cruelty; or

5 (8) the defendant committed the murder with intent  
6 to prevent the murdered individual from testifying in any  
7 criminal prosecution or giving material assistance to the  
8 State in any investigation or prosecution, either against  
9 the defendant or another; or the defendant committed the  
10 murder because the murdered individual was a witness in  
11 any prosecution or gave material assistance to the State  
12 in any investigation or prosecution, either against the  
13 defendant or another; or

14 (9) the defendant, while committing an offense  
15 punishable under Sections 401, 401.1, 401.2, 405, 405.2,  
16 407 or 407.1 or subsection (b) of Section 404 of the  
17 Illinois Controlled Substances Act, or while engaged in a  
18 conspiracy or solicitation to commit such offense,  
19 intentionally killed an individual or counseled,  
20 commanded, induced, procured or caused the intentional  
21 killing of the murdered individual; or

22 (10) the defendant was incarcerated in an  
23 institution or facility of the Department of Corrections  
24 at the time of the murder, and while committing an  
25 offense punishable as a felony under Illinois law, or  
26 while engaged in a conspiracy or solicitation to commit  
27 such offense, intentionally killed an individual or  
28 counseled, commanded, induced, procured or caused the  
29 intentional killing of the murdered individual; or

30 (11) the murder was committed in a cold, calculated  
31 and premeditated manner pursuant to a preconceived plan,  
32 scheme or design to take a human life by unlawful means,  
33 and the conduct of the defendant created a reasonable  
34 expectation that the death of a human being would result

1           therefrom; or

2           (12) the murdered individual was an emergency  
3           medical technician - ambulance, emergency medical  
4           technician - intermediate, emergency medical technician -  
5           paramedic, ambulance driver, or other medical assistance  
6           or first aid personnel, employed by a municipality or  
7           other governmental unit, killed in the course of  
8           performing his official duties, to prevent the  
9           performance of his official duties, or in retaliation for  
10          performing his official duties, and the defendant knew or  
11          should have known that the murdered individual was an  
12          emergency medical technician - ambulance, emergency  
13          medical technician - intermediate, emergency medical  
14          technician - paramedic, ambulance driver, or other  
15          medical assistance or first aid personnel; or

16          (13) the defendant was a principal administrator,  
17          organizer, or leader of a calculated criminal drug  
18          conspiracy consisting of a hierarchical position of  
19          authority superior to that of all other members of the  
20          conspiracy, and the defendant counseled, commanded,  
21          induced, procured, or caused the intentional killing of  
22          the murdered person; or

23          (14) the murder was intentional and involved the  
24          infliction of torture. For the purpose of this Section  
25          torture means the infliction of or subjection to extreme  
26          physical pain, motivated by an intent to increase or  
27          prolong the pain, suffering or agony of the victim; or

28          (15) the murder was committed as a result of the  
29          intentional discharge of a firearm by the defendant from  
30          a motor vehicle and the victim was not present within the  
31          motor vehicle; or

32          (16) the murdered individual was 60 years of age or  
33          older and the death resulted from exceptionally brutal or  
34          heinous behavior indicative of wanton cruelty; or

1           (17) the murdered individual was a disabled person  
2 and the defendant knew or should have known that the  
3 murdered individual was disabled. For purposes of this  
4 paragraph (17), "disabled person" means a person who  
5 suffers from a permanent physical or mental impairment  
6 resulting from disease, an injury, a functional disorder,  
7 or a congenital condition that renders the person  
8 incapable of adequately providing for his or her own  
9 health or personal care; or

10           (18) the murder was committed by reason of any  
11 person's activity as a community policing volunteer or to  
12 prevent any person from engaging in activity as a  
13 community policing volunteer; or

14           (19) the murdered individual was subject to an  
15 order of protection and the murder was committed by a  
16 person against whom the same order of protection was  
17 issued under the Illinois Domestic Violence Act of 1986;  
18 or

19           (20) the murdered individual was known by the  
20 defendant to be a teacher or other person employed in any  
21 school and the teacher or other employee is upon the  
22 grounds of a school or grounds adjacent to a school, or  
23 is in any part of a building used for school purposes.

24           (c) Consideration of factors in Aggravation and  
25 Mitigation.

26           The court shall consider, or shall instruct the jury to  
27 consider any aggravating and any mitigating factors which are  
28 relevant to the imposition of the death penalty. Aggravating  
29 factors may include but need not be limited to those factors  
30 set forth in subsection (b). Mitigating factors may include  
31 but need not be limited to the following:

32           (1) the defendant has no significant history of  
33 prior criminal activity;

34           (2) the murder was committed while the defendant

1 was under the influence of extreme mental or emotional  
2 disturbance, although not such as to constitute a defense  
3 to prosecution;

4 (3) the murdered individual was a participant in  
5 the defendant's homicidal conduct or consented to the  
6 homicidal act;

7 (4) the defendant acted under the compulsion of  
8 threat or menace of the imminent infliction of death or  
9 great bodily harm;

10 (5) the defendant was not personally present during  
11 commission of the act or acts causing death.

12 (d) Separate sentencing hearing.

13 Where requested by the State, the court shall conduct a  
14 separate sentencing proceeding to determine the existence of  
15 factors set forth in subsection (b) and to consider any  
16 aggravating or mitigating factors as indicated in subsection  
17 (c). The proceeding shall be conducted:

18 (1) before the jury that determined the defendant's  
19 guilt; or

20 (2) before a jury impanelled for the purpose of the  
21 proceeding if:

22 A. the defendant was convicted upon a plea of  
23 guilty; or

24 B. the defendant was convicted after a trial  
25 before the court sitting without a jury; or

26 C. the court for good cause shown discharges  
27 the jury that determined the defendant's guilt; or

28 (3) before the court alone if the defendant waives  
29 a jury for the separate proceeding.

30 (e) Evidence and Argument.

31 During the proceeding any information relevant to any of  
32 the factors set forth in subsection (b) may be presented by  
33 either the State or the defendant under the rules governing  
34 the admission of evidence at criminal trials. Any

1 information relevant to any additional aggravating factors or  
2 any mitigating factors indicated in subsection (c) may be  
3 presented by the State or defendant regardless of its  
4 admissibility under the rules governing the admission of  
5 evidence at criminal trials. The State and the defendant  
6 shall be given fair opportunity to rebut any information  
7 received at the hearing.

8 (f) Proof.

9 The burden of proof of establishing the existence of any  
10 of the factors set forth in subsection (b) is on the State  
11 and shall not be satisfied unless established beyond a  
12 reasonable doubt.

13 (g) Procedure - Jury.

14 If at the separate sentencing proceeding the jury finds  
15 that none of the factors set forth in subsection (b) exists,  
16 the court shall sentence the defendant to a term of  
17 imprisonment under Chapter V of the Unified Code of  
18 Corrections. If there is a unanimous finding by the jury  
19 that one or more of the factors set forth in subsection (b)  
20 exist, the jury shall consider aggravating and mitigating  
21 factors as instructed by the court and shall determine  
22 whether the sentence of death shall be imposed. If the jury  
23 determines unanimously that there are no mitigating factors  
24 sufficient to preclude the imposition of the death sentence,  
25 the court shall sentence the defendant to death. If any juror  
26 concludes that there is a residual doubt concerning the  
27 defendant's guilt, that juror shall so advise the court and  
28 the court shall sentence the defendant to a term of  
29 imprisonment under Chapter V of the Unified Code of  
30 Corrections.

31 Unless the jury unanimously finds that there are no  
32 mitigating factors sufficient to preclude the imposition of  
33 the death sentence the court shall sentence the defendant to  
34 a term of imprisonment under Chapter V of the Unified Code of



1 Corrections.

2 (h) Procedure - No Jury.

3 In a proceeding before the court alone, if the court  
4 finds that none of the factors found in subsection (b)  
5 exists, the court shall sentence the defendant to a term of  
6 imprisonment under Chapter V of the Unified Code of  
7 Corrections.

8 If the Court determines that one or more of the factors  
9 set forth in subsection (b) exists, the Court shall consider  
10 any aggravating and mitigating factors as indicated in  
11 subsection (c). If the Court determines that there are no  
12 mitigating factors sufficient to preclude the imposition of  
13 the death sentence, the Court shall sentence the defendant to  
14 death.

15 Unless the court finds that there are no mitigating  
16 factors sufficient to preclude the imposition of the sentence  
17 of death, the court shall sentence the defendant to a term of  
18 imprisonment under Chapter V of the Unified Code of  
19 Corrections.

20 (i) Appellate Procedure.

21 The conviction and sentence of death shall be subject to  
22 automatic review by the Supreme Court. Such review shall be  
23 in accordance with rules promulgated by the Supreme Court.

24 (j) Disposition of reversed death sentence.

25 In the event that the death penalty in this Act is held  
26 to be unconstitutional by the Supreme Court of the United  
27 States or of the State of Illinois, any person convicted of  
28 first degree murder shall be sentenced by the court to a term  
29 of imprisonment under Chapter V of the Unified Code of  
30 Corrections.

31 In the event that any death sentence pursuant to the  
32 sentencing provisions of this Section is declared  
33 unconstitutional by the Supreme Court of the United States or  
34 of the State of Illinois, the court having jurisdiction over

1 a person previously sentenced to death shall cause the  
2 defendant to be brought before the court, and the court shall  
3 sentence the defendant to a term of imprisonment under  
4 Chapter V of the Unified Code of Corrections.

5 (k) Notwithstanding any other provision of this Section,  
6 a defendant charged with first degree murder is not eligible  
7 for a sentence of death when:

8 (1) Identity is the issue in the case and the court  
9 determines that the State's ability to meet its burden to  
10 prove the defendant guilty beyond a reasonable doubt  
11 depends upon the testimony of a sole eyewitness who will  
12 testify that the defendant is the perpetrator of the  
13 offense; or

14 (2) The defendant's case has previously been tried  
15 by the court and a jury and, following the trial, the  
16 jury was unable to reach a unanimous verdict on the  
17 defendant's guilt of the offense.

18 (Source: P.A. 90-213, eff. 1-1-98; 90-651, eff. 1-1-99;  
19 90-668, eff. 1-1-99; 91-357, eff. 7-29-99; 91-434, eff.  
20 1-1-00.)